SUPREME COURT OF THE UNITED STATES.

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| STANDARD OIL COMPANY (New Jersey), *Petitioner,* *against* SOUTHERN PACIFIC COMPANY, and JAMES C. DAVIS, Director General of Railroads, *Respondents.* | OCTOBER TERM, 1923. No. 607. |

# MEMORANDUM IN SUPPORT OF MOTION FOR ORDER PERMITTING TAKING OF NEW EVIDENCE IN THIS COURT BEFORE A COMMISSION.

I. This is a suit in admiralty. It is in this Court on *certiorari* granted by this Court on November 12, 1923.

II. The motion to take new proof before a Commissioner orally is made for the reason explained in the seventh paragraph of the affidavit of William H. McGrann, verified April 14, 1924. *Motion papers,* page 11.

The reason, as there stated, is that the petitioner is not in a position to draw up written interrogatories dealing with the matters sought to be proved because it does not know, and has not been able to find out, what procedure was followed in connection with the settlement between the Director General of Railroads and the Southern Pacific Company in respect of the value of the steamship *Proteus.*

The circumstances of this settlement, so far as they are within the petitioner's knowledge, are set forth in the fourth paragraph of the affidavit in which a full quotation is made of the statements made in the petition for *certiorari* in this case which was granted by this Court. *Motion papers*, pp. 7-10.

III. It has been settled by the recent decisions of this Court that a suit in admiralty is a new trial on appeal even in this Court.

> *Reid* v. *Fargo*, 241 U. S. 544 (1916);
> *Watts* v. *Unione Austriaca*, 248 U. S. 9 (1918);
> *The John Twohy*, 255 U. S. 77 (1921).

Consequently, it is submitted that the petitioner should be allowed to have on the record in this case, before the argument is had in this Court, all the proofs that will be necessary in order to give this Court full opportunity to deal with the case as justice may require.

IV. Rule 12 of the Rules of this Court provides in Section 2 for the taking of new evidence in cases of admiralty and maritime jurisdiction.

Apparently, the rule provides for the issuance of a commission upon interrogatories and cross-interrogatories as the usual procedure.

The Rule, however, contains a proviso as follows:

> "Provided, however, that nothing in this rule shall prevent any party from giving oral testimony in open Court in cases where by law it is admissible."

V. The petitioner realizes that new testimony is not allowed to be taken in this Court as a matter of course even under this rule.

*The Mabey,* 10 Wall. 419 (1870).

And that new evidence will not be allowed to be taken when the person applying to secure the new evidence has himself been responsible for the omission in the courts below of the new evidence sought to be introduced here.

*The Mabey,* 13 Wall. 738 (1871).

VI. But in the present case, it is submitted that the petitioner has shown a perfectly good reason why it did not secure either in the District Court or in the Circuit Court of Appeals the evidence which it now seeks to take here.

The reason that the new evidence sought to be introduced here as to the settlement between the Southern Pacific Company and the Director General of Railroads with regard to the value of the *Proteus* was not secured in the District Court was that the settlement had not been made when the case was tried there.

*As the petitioner is informed and believes, the settlement was made between the time of the decision of the Court below and the decision of the Circuit Court of Appeals.*

*The petitioner did not learn of this settlement until after the expiration of the term of the Circuit Court of Appeals, when that Court was powerless to act in the matter.*

There remained, therefore, only one recourse for the petitioner, namely, to ask this Court to allow the taking of the new evidence.

VII. In order that this Court might be fully advised that this application for the taking of new evidence was necessary and would be made, the whole situation was fully set forth in the 11th, 12th, 13th and 14th paragraphs of the petition for *certiorari*, which are quoted *in extenso* in the motion papers. *Motion papers*, pp. 7-10.

VIII. Leave to have a Commission take new evidence on interrogatories would not meet the petitioner's difficulties for the reason above stated that it does not now know whom it will have to examine in connection with the matter, and it cannot know, until it has had an opportunity of questioning the Director General of Railroads.

IX. It is submitted, therefore,

(1) that a clear case entitling the petitioner to take new evidence in this Court has been made out and

(2) that the petitioner has also shown the necessity of having this evidence taken orally before a Commissioner appointed by this Court.

X. There is ample time for the taking of this evidence in this manner because this case cannot possibly be reached on the Calendar of this Court for argument until sometime during the winter of 1925.

The respondents will not be prejudiced, therefore, as to the time of final adjudication of the case by the granting of this motion.

XI. It would ill become the respondents to endeavor to avoid a full inquiry into this phase of the case. If they do endeavor to do so, it will imply a confession of fear as to the result of having the truth known.

XII. It must be remembered that this motion does not involve a request for a chance to get evidence of independent witnesses. *It involves a justifiable demand for a right to secure evidence from the opposing parties, the respondents, who have suppressed it and have hitherto blocked all attempts to secure information.*

WHEREFORE the petitioner submits, that it has made out a case for the taking of new evidence within the spirit of the rule under the proviso above quoted in Rule 12, Sec. 2 of the Rules of this Court now in force, and that this Court, in the exercise of its plenary power to vary or extend its own rules in order to serve the ends of justice, should grant the motion as made, and make an order appointing a Commissioner to take evidence orally and report it duly certified to this Court and giving the Commissioner such powers as will enable him to sit in Washington or New York in his discretion as necessity may be shown.

Respectfully submitted,

WILLIAM H. MCGRANN,
JOHN M. WOOLSEY,
*Counsel for Petitioner.*

New York, April 1924.

SUPREME COURT OF THE UNITED STATES.

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| STANDARD OIL COMPANY (NEW JERSEY), *Petitioner,* *against* SOUTHERN PACIFIC COMPANY, and JAMES C. DAVIS, Director General of Railroads, Respondents. | OCTOBER TERM, 1923 No. 607 |

# INTERROGATORIES TO OFFICERS AND EMPLOYEES AND TO FORMER OFFICERS AND EMPLOYEES OF THE RAILROAD ADMINISTRATION.

INTERROGATORIES ADDRESSED BY COUNSEL FOR THE PETITIONER TO

*James C. Davis,* DIRECTOR GENERAL OF RAILROADS;
*Frank Wright,* FORMERLY RAILROAD ADMINISTRATION'S REPRESENTATIVE IN MARINE MATTERS;
*L. J. Tracy,* COMPTROLLER OF THE RAILROAD ADMINISTRATION; AND
*Ralph Blaisdell,* TREASURER OF THE RAILROAD ADMINISTRATION,

IN PURSUANCE OF LEAVE GIVEN BY AN ORDER OF THE SUPREME COURT OF THE UNITED STATES MADE AND ENTERED IN THE ABOVE SUIT ON MAY 5, 1924, TO BE BY THEM AND EACH OF THEM ANSWERED IN WRITING AND UNDER OATH:

FIRST: State your name, age, residence and present occupation.

SECOND: What position or positions did you occupy between August 1, 1918 and August 1, 1924?

THIRD: At or about the time when, or at some time after, the Railroad Administration took over the properties of the Southern Pacific Company and its subsidiaries in pursuance of the Act of Congress of August 26, 1916, Chapter 418, Paragraph 1, 39 Stat. 645. and of the proclamation of the President of December 16, 1917, was there an agreement in writing entered into by and between the Southern Pacific Company and/or its subsidiaries with the United States?

FOURTH: If you answer the Third Interrogatory in the affirmative, will you please produce a true copy of such agreement and hand it to the Commissioner to be marked and used as an exhibit in this cause.

FIFTH: After the loss of the steamship *Proteus* whilst in possession of the Director General of Railroads on August 19, 1918, were there any negotiations had between the Director General of Railroads and the Southern Pacific Company in connection with a payment to the Southern Pacific Company by and in behalf of the Director General of Railroads for the loss of the *Proteus*?

SIXTH: If you answer the preceding interrogatory in the affirmative, state when these negotiations began

and by whom they were conducted on behalf of the Director General of Railroads and on behalf of the Southern Pacific Company.

SEVENTH: Were any of these negotiations in writing in the form of letters, telegrams or other writings?

EIGHTH: If you answer the preceding interrogatory in the affirmative, please produce true copies of any letters, telegrams, or other writings exchanged between the Director General of Railroads and/or any of his agents or employees, and the Southern Pacific Company and/or any of its agents or employees, in connection with such negotiations, and hand them to the Commissioner to be marked and used as exhibits in this cause.

NINTH: If you state that there were negotiations had, as asked in the Fifth, Sixth, Seventh and Eighth Interrogatories, will you state whether, as a result of those negotiations, there was any agreement reached as to the amount which should be paid by the Railroad Administration to the Southern Pacific Company for the loss of the *Proteus?*

TENTH: If you answer the Ninth Interrogatory in the affirmative, will you please state when such an agreement was reached and what amount the Director General of Railroads agreed to pay to the Southern Pacific Company for the loss of the *Proteus.*

ELEVENTH: Was there any written contract entered into by and between the Director General of Railroads

and the Southern Pacific Company embodying the agreement mentioned in the Ninth and Tenth Interrogatories?

TWELFTH: If you answer the Eleventh Interrogatory in the affirmative, please produce a true copy of such agreement and hand it to the Commissioner to be marked and used as an exhibit in this cause.

THIRTEENTH: If there was not any formal written agreement, please produce any letters, telegrams, or other documents or writings which may have embodied the final agreement by and between the Director General of Railroads and the Southern Pacific Company as to the amount which was to be paid for the loss of the *Proteus*.

FOURTEENTH: If you answer the Ninth and Tenth Interrogatories in the negative, state whether or not an item representing the amount to be paid for the loss of the *Proteus* appeared in any schedule of items embodied in any general settlement between the Director General of Railroads and the Southern Pacific Company?

FIFTEENTH: If you answer the Fourteenth Interrogatory in the affirmative, state the amount of the item representing the amount to be paid for the loss of the *Proteus*.

SIXTEENTH: If you state an amount in answer to the Ninth and Tenth Interrogatories and/or in answer to the Fourteenth and Fifteenth Interrogatories which fixed the amount of payment to be made for the loss of the *Proteus*, state whether or not that amount included in-

terest from the date of the loss, and if it did not, whether any other or further payment was made on account of interest on the said amount.

SEVENTEENTH: If in answer to the Ninth and Tenth Interrogatories and/or the Fourteenth and Fifteenth Interrogatories, you have stated an amount agreed to be made as a payment for the loss of the *Proteus*,

(a) State whether or not in arriving at that amount you took into consideration the value of the *Proteus* which had been fixed by the Commissioner and by the United States District Court for the Southern District of New York in this litigation?

(b) If you did not take into consideration the value of the *Proteus* fixed by the Commissioner and the said United States District Court in this case, will you state on what you based the amount to be paid by the Director General of Railroads to the Southern Pacific Company for the loss of the *Proteus*.

EIGHTEENTH: Was the agreed amount to be paid for the loss of the *Proteus* ever paid by the Director General of Railroads to the Southern Pacific Company?

NINETEENTH: If you answer the Eighteenth Interrogatory in the affirmative, will you state the date of this payment, the total amount thereof, and the person to whom it was made?

TWENTIETH: Was there any final written agreement of settlement made between the Director General of Rail-

roads on the one hand and the Southern Pacific Company and its subsidiary companies on the other?

TWENTY-FIRST: If you answer the Twentieth Interrogatory in the affirmative, will you state when this final agreement of settlement was made and by whom it was signed on behalf of the several parties?

TWENTY-SECOND: If you state there was such an agreement, will you please produce a true copy thereof and hand it to the Commissioner to be marked as an exhibit and used in this cause?

TWENTY-THIRD: If it is a fact that there was a lump sum settlement made by and between the Director General of Railroads on the one hand and the Southern Pacific Company and its subsidiary companies on the other, will you state what the amount of that lump sum settlement was and what was allowed in such lump sum settlement on account of the loss of the steamship *Proteus*?

TWENTY-FOURTH: In pursuance of the final settlement, were there any releases exchanged by and between the Railroad Administration and the Southern Pacific Company and its subsidiary companies?

TWENTY-FIFTH: If you answer the Twenty-fourth Interrogatory in the affirmative, will you please produce and hand to the Commissioner to be marked and used as exhibits a true copy or copies of any and all such releases?

TWENTY-SIXTH: (a) Were there any oral negotiations on the subject of the value of the *Proteus?*

(b) If so, where did they occur and between what persons were they held?

TWENTY-SEVENTH: (a) During the negotiations was either the Director General of Railroads or the Southern Pacific Company represented by any lawyer?

(b) If so, what was the name of the lawyer representing the Director General of Railroads and what was the name of the lawyer representing the Southern Pacific Company?

(c) If you state that there were lawyers and give their names, will you please state to what firm or firms the said lawyers belonged?

TWENTY-EIGHTH: Did the Director General of Railroads receive any letters written by a lawyer or lawyers representing the Southern Pacific Company regarding a settlement for the loss of the *Proteus?*

TWENTY-NINTH: If he did, will you please produce a true copy of such letter or letters and hand them to the Commissioner to be marked and used in this cause.

THIRTIETH: If there are within your knowledge any other facts or circumstances or writing in connection with said agreement on the amount which was paid for the loss of the *Proteus* or the actual payment made by the Director General for the loss of the *Proteus,* about which you

have not been specifically interrogated in the foregoing interrogatories, state fully such facts and circumstances as are within your knowledge and produce any such writings to be marked by the Commissioner and used as exhibits herein.

WILLIAM H. MCGRANN,

JOHN M. WOOLSEY,

Counsel for Standard Oil Company,
*Petitioner.*

SUPREME COURT OF THE UNITED STATES.

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| STANDARD OIL COMPANY (New Jersey), *Petitioner,* *against* SOUTHERN PACIFIC COMPANY, and JAMES C. DAVIS, Director General of Railroads, *Respondents.* | OCTOBER TERM, 1923. No. 607. |

## INTERROGATORIES TO OFFICERS AND EMPLOYEES OF SOUTHERN PACIFIC COMPANY.

INTERROGATORIES ADDRESSED BY COUNSEL FOR THE PETITIONER TO

*Julius Kruttschnitt*, CHAIRMAN OF BOARD OF DIRECTORS OF THE SOUTHERN PACIFIC COMPANY;

*Andrew K. Van Deventer*, TREASURER OF THE SOUTHERN PACIFIC COMPANY;

*Hugh Neill*, SECRETARY OF THE SOUTHERN PACIFIC COMPANY; AND

*Carl W. Jungen*, MANAGER OF THE SOUTHERN PACIFIC COMPANY'S ATLANTIC STEAMSHIP LINES,

IN PURSUANCE OF LEAVE GIVEN BY AN ORDER OF THE SUPREME COURT OF THE UNITED STATES MADE AND ENTERED

IN THE ABOVE SUIT ON MAY 5, 1924, TO BE BY THEM AND EACH OF THEM ANSWERED IN WRITING AND UNDER OATH:

FIRST: State your name, age, residence and present occupation.

SECOND: What position or positions did you occupy between August 1, 1918 and August 1, 1924?

THIRD: At or about the time when, or at some time after, the Railroad Administration took over the properties of the Southern Pacific Company and its subsidiaries in pursuance of the Act of Congress of August 26, 1916, Chapter 418, Paragraph 1, 39 Stats. 645, and of the proclamation of the President of December 16, 1917, was there an agreement in writing entered into by and between the Southern Pacific Company and/or its subsidiaries with the United States?

FOURTH: If you answer the third interrogatory in the affirmative, will you please produce a true copy of such agreement and hand it to the Commissioner to be marked and used as an exhibit in this cause?

FIFTH: After the loss of the steamship *Proteus* whilst in possession of the Director General of Railroads, were there any negotiations had between the Director General of Railroads and the Southern Pacific Company in connection with a payment to the Southern Pacific Company by or in behalf of the Director General of Railroads for the loss of the *Proteus*?

SIXTH: If you answer the preceding interrogatory in the affirmative, state when these negotiations began and by whom they were conducted on behalf of the Director General of Railroads and on behalf of the Southern Pacific Company?

SEVENTH: Were any of these negotiations in writing in the form of letters, telegrams or other writings?

EIGHTH: If you answer the preceding interrogatory in the affirmative, please produce true copies of any letters, telegrams, or other writings exchanged between the Director General of Railroads and/or any of his agents or employees, and the Southern Pacific Company and/or any of its agents or employees, in connection with such negotiations, and hand them to the Commissioner to be marked and used as exhibits in this cause.

NINTH: If you state that there were negotiations had, as asked in the Fifth, Sixth, Seventh and Eighth Interrogatories, will you state whether, as a result of those negotiations, there was any agreement reached as to the amount which should be paid by the Railroad Administration to the Southern Pacific Company for the loss of the *Proteus*?

TENTH: If you answer the Ninth Interrogatory in the affirmative, will you please state when such an agreement was reached and what amount the Director General of Railroads agreed to pay to the Southern Pacific Company for the loss of the *Proteus*?

ELEVENTH: Was there any written contract entered into by and between the Director General of Railroads and the Southern Pacific Company embodying the agreement mentioned in the Ninth and Tenth Interrogatories?

TWELFTH: If you answer the Eleventh Interrogatory in the affirmative, please produce a true copy of such agreement and hand it to the Commissioner to be marked and used as an exhibit in this cause.

THIRTIETH: If there was not any formal written agreement, please produce any letters, telegrams, or other documents or writings which may have embodied the final agreement by and between the Director General of Railroads and the Southern Pacific Company as to the amount which was to be paid for the loss of the *Proteus*.

FOURTEENTH: If you answer the Ninth and Tenth Interrogatories in the negative, state whether or not an item representing the amount to be paid for the loss of the *Proteus* appeared in any schedule of items embodied in any general settlement between the Director General of Railroads and the Southern Pacific Company?

FIFTEENTH: If you answer the Fourteenth Interrogatory in the affirmative, state the amount of the item representing the amount to be paid for the loss of the *Proteus*.

SIXTEENTH: If you state an amount in answer to the Ninth and Tenth Interrogatories and/or in answer to the Fourteenth and Fifteenth Interrogatories which

fixed the amount of payment to be made for the loss of the *Proteus,* state whether or not that amount included interest from the date of the loss, and if it did, whether any other or further payment was made on account of interest on the said amount.

SEVENTEENTH: If in answer to the Ninth and Tenth Interrogatories and/or the Fourteenth and Fifteenth Interrogatories, you have stated an amount agreed to be made as a payment for the loss of the *Proteus,*

(a) State whether or not in arriving at that amount you took into consideration the value of the *Proteus* which had been fixed by the Commissioner and by the United States District Court for the Southern District of New York in this litigation?

(b) If you did not take into consideration the value of the *Proteus* fixed by the Commissioner and the said United States District Court in this case, will you state on what you based the amount which was agreed on to be paid by the Director General of Railroads to the Southern Pacific Company for the loss of the *Proteus.*

EIGHTEENTH: Was the agreed amount to be paid for the loss of the *Proteus* ever paid by the Director General of Railroads to the Southern Pacific Company?

NINETEENTH: If you answer the Eighteenth Interrogatory in the affirmative, will you state the date of this payment, the total amount thereof, and the person to whom it was made?

TWENTIETH: Was there any final written agreement of settlement made between the Director General of Railroads on the one hand and the Southern Pacific Company and its subsidiary companies on the other?

TWENTY-FIRST: If you answer the Twentieth Interrogatory in the affirmative, will you state when this final agreement of settlement was made and by whom it was signed on behalf of the several parties?

TWENTY-SECOND: If you state there was such an agreement, will you please produce a true copy thereof and hand it to the Commissioner to be marked as an exhibit and used in this cause?

TWENTY-THIRD: If it is a fact that there was a lump sum settlement made by and between the Director General of Railroads on the one hand and the Southern Pacific Company and its subsidiary companies on the other, will you state what the amount of that lump sum settlement was and what was allowed in such lump sum settlement on account of the loss of the steamship PROTEUS?

TWENTY-FOURTH: In pursuance of the final settlement, were there any releases exchanged by and between the Railroad Administration and the Southern Pacific Company and its subsidiary companies?

TWENTY-FIFTH: If you answer the Twenty-fourth Interrogatory in the affirmative, will you please produce and hand to the Commissioner to be marked and used as

exhibits a true copy or copies of any and all such releases?

TWENTY-SIXTH: (a) Were there any oral negotiations on the subject of the value of the PROTEUS?

(b) If so, where did they occur and between what persons were they held?

TWENTY-SEVENTH: (a) During the negotiations was either the Director General of Railroads or the Southern Pacific Company represented by any lawyer?

(b) If so, what was the name of the lawyer representing the Director General of Railroads and what was the name of the lawyer representing the Southern Pacific Company?

(c) If you state that there were lawyers and give their names, will you please state to what firm or firms the said lawyers belonged?

TWENTY-EIGHTH: Did the Southern Pacific Company receive any letters from counsel for the Director General of Railroads regarding any negotiations for settlement of the loss of the *Proteus*?

TWENTY-NINTH: If it did, will you please produce a true copy of such letter or letters and hand them to the Commissioner to be marked and used in this cause?

THIRTIETH: If there are within your knowledge any other facts or circumstances or writing in connection

with said agreement on the amount which was paid for the loss of the *Proteus* or the actual payment made by the Director General for the loss of the *Proteus*, about which you have not been specifically interrogated in the foregoing interrogatories, state fully such facts and circumstances as are within your knowledge and produce any such writings to be marked by the Commissioner and used as exhibits herein.

WILLIAM H. MCGRANN,

JOHN M. WOOLSEY,

Counsel for Standard Oil Company,
*Petitioner.*